IN THE SUPREME COURT OF THE UNITED STATES

GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC., ET AL., Petitioners, v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL., Respondents.	No. 79-488

Washington, D. C.,

Wednesday, March 26, 1980.

The above-entitled matter came on for further oral argument at 10:03 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

LAWRENCE G. WALLACE, ESQ., Office of the Solicitor General, Department of Justice, Washington, D. C. 20530; on behalf of the Respondents

JAMES R. DICKENS, ESQ., Karr, Tuttle, Koch, Campbell, Mawer & Morrow, 2600 Seattle-First National Bank Building, Seattle, Washington 98154; on behalf of the Petitioners

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C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will resume argument in 79-488, General Telephone v. Equal Employment Opportunity Commission.

Mr. Wallace, you may proceed when you are ready.

ORAL ARGUMENT OF LAWRENCE G. WALLACE, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. WALLACE: Thank you, Mr. Chief Justice and may it please the Court:

Just before the Court rose yesterday, Mr. Justice Marshall asked me what would be wrong with our having to comply with Rule 23 in suits in which make whole relief is sought as well as injunctive relief. Basically there would be three things that would be wrong with this. They are somewhat interrelated.

The first is there is no reason to think that Congress intended so sharp a change from the traditional practice in suits by the government or its agencies. Not only was Congress presumably familiar with the pattern of government litigation under many other statutes, but there had indeed been 69 suits filed by the Attorney General between 1964 and 1972 under section 707 of this act, some of which had sought relief that would benefit a class of persons such as preferential hiring order, constructive seniority and the like,

and in none of those cases had it ever been suggested by anyone that Rule 23 procedures need be used and --

QUESTION: How many of those involved claims for monetary relief?

MR. WALLACE: None of them up until 1972 did, although some decided shortly thereafter did include claims for monetary relief. The legislative history indicates that the newly authorized governmental suits under section 706 were to be assimilated to the section 707 suits to the point where the sponsors of the legislation said section 707 would essentially become a redundancy in the law and that everything could be accomplished under section 706 that previously could be accomplished only under section 707.

QUESTION: Well, would that same be true vice versa that everything could be accomplished under 707 that could be accomplished under 706?

MR. WALLACE: Providing the pattern of practice criterion could be met which is required to bring a 707 suit and get relief, which is not required under 706.

QUESTION: The two were virtually interchangeable in the view of the sponsors except for that quality?

MR. WALLACE: Except for that quality, as far as we can see in the legislative history.

QUESTION: Then why did the sponsors want 706?

MR. WALLACE: The government to be able to sue under 706 as well as 707?

QUESTION: Yes.

MR. WALLACE: Apparently it was the idea that the commission would become the primary enforcement mechanism and that there would be -- that the law would be enforced primarily by governmental suits rather than private suits and that the government should not have to sue only in pattern or practice cases. Even though if one takes a generous enough view of pattern or practice, most cases could be sit into the pattern or practice terminology, but not all cases. That seemed to be the predominant thinking. I think it was really part of the compromise between those who thought that the commission should have the cease and desist authority and those who thought that court enforcement should continue to be the method of enforcement, but that the commission would have the responsibility of bringing most of the court cases.

The second thing that would be wrong with this, and this cuts it seems to me a little more deeply into the case, is that it would cast the government in an inappropriate role in enforcement of the statute, and in some ways this is among the most important things

about the Court's opinion in this case, the role to be envisioned for the government in the enforcement of Title VII.

The commission and the Attorney General have never understood that role to be the role of a proxy for individual complainants or for any particular class of persons, and there is no lawyer-client relationship established with any particular group of persons as there is in the statutes that we discussed yesterday, where possibly the government could bring a class action where it is serving as a lawyer for particular individuals.

The commission's assignment and the Attorney General's assignment in the cases that they are to bring or he is to bring is to enforce the law rather than to act on behalf of any individuals. This is indicated on the face of the statute itself, which is section 706 is set forth on page A34 of the appendix to the petition for certiorari, and it starts off saying the commission is empowered as hereafter provided to prevent any person from engaging in any unlawful employment practice as set forth in the other provisions, not to represent any group of individuals, and there are other references that are consistent with this view of the government's role in enforcement. I want to refer to only one of them.

On page A-37, in section (f)(1) there, it says, "If within thirty days," et cetera, "the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action..." The responsibility is to see to it that the law is enforced. If the commission is satisfied that the agreement properly implements the law, there is no obligation to any particular group or class of persons to make sure that they are satisfied.

Of course, if they won't agree to the agreement, there might be litigation in any event, but the commission would not have the responsibility to conduct that litigation.

QUESTION: What about an action by the administrator of the Fair Labor Standards Act, would --

MR. WALLACE: It is really a similar responsibility to enforce the law. It happens that in --

QUESTION: Could he bring a class action?

MR. WALLACE: They never have. They never have had to. It has always been, the practice has always been that they have statutory authority to seek the relief for -- to see to it that the law is complied with and that those who have been denied proper wages are made whole. It is part of the statutory authority. There never has been the use of Rule 23 in those cases.

Those cases don't present some of the complexities and considerations and the possibilities for divergence of the public interest from private interests that are involved in Title VII. The standards are very clear under the Fair Labor Standards Act. It is almost once you've done your factual investigation, it is almost a mathematical exercise.

Title VII is very different from that. Even if one takes a rather one-sided view of the government's enforcement responsibilities, if you pose an example of getting rightful place seniority relief under this Court's decision in Franks v. Bowman Transportation Company, for example, the question is who is entitled to that rightful place in seniority relief in many situations, what classes of employees. If it can be secured only for a particular racial group, that is more advantageous to the members of that class than if it is broadened to include other ethnic or gender groups.

On the other hand, if it isn't broadened to include these other groups, they are being disadvantaged by the granting of it to the first group. There are strains here, there are possibilities of competition among claimants so that the commission would be embarked on a treacherous course if it thought of its

role as anything other than seeing to it that the law is properly enforced. If it thought of itself as to be cast in the role of a representative for any particular group and --

QUESTION: What if it thought the law wasn't being properly enforced, why can't it gain everything it wants by a simple injunction?

MR. WALLACE: Well, there is make whole relief and part of what the legislative history reflected was that the commission was to be able to get broader based relief and more comprehensive relief, similar to the relief that had been secured in class actions brought by private individuals theretofore under section 706, even though for other purposes the action by the commission or the Attorney General was to be assimilated to the familiar kind of action under 707.

The example that I have given is really two one-dimensional examples because Title VII protects the rights of all persons not to be discriminated against on the basis of their race and their sex or their sex or the other classifications, and while the commission, the United States are of course committed to an effective enforcement policy of putting an end to discrimination wherever it is found, to finding effective remedies to make whole the victims of discrimination and to prevent

its reoccurrence.

As this Court is well aware, sometimes remedies can be excessive. Sometimes this Court has found remedies that we have contended for to be excessive, and they can in extreme cases become an instrument that treats other unfairly, an instrument of discrimination in themselves. And when the United States or the commission brings its weight and its resources into the enforcement of this law, it must be with an awareness of all of the rights that will be affected, including other rights that were respected under Title VII, collective bargaining rights, managerial prerogatives, and the like. It must not approach these cases with a one-dimensional view that it is serving only as a representative of a particular class of individuals. That to us is at the heart of this case and that is our understanding of the way Congress expected governmental authorities to carry out their responsibilities under this statute, just as they do under any other statute. It is a law enforcement responsibility.

And this element of detachment of the commission or of the Attorney General from the particular interests involved is reflected in many details of practice under the act. The commission need not include all of the issues raised by a charging party in its suit, if it concludes that some of them are without merit, and it is

not limited to the issues raised by the charging party or even to the interests that the charging party represents because the failure to include the interests of others found to be victims of this discrimination might result in the suit working to their detriment in some circumstances actually, and the commission's responsibility is to enforce the law in a more comprehensive manner.

Moreover, the charging party is not bound when the commission thinks there is no merit in the charge at all and refuses to bring suit. The charging party can still bring a suit.

QUESTION: Of course, the problem doesn't arise unless a suit is brought and that is --

MR. WALLACE: Well, that's right.

QUESTION: I didn't get your third reason in answer to --

MR. WALLACE: Well, I haven't gotten to it yet.

QUESTION: Oh. I wanted to make sure I hadn't missed it. Okay.

MR. WALLACE: My second one ran out and -- the third reason, Mr. Justice, is that Rule 23 doesn't fit the situation as the terms of Rule 23 are ordinarily understood. The rule would really have to be distorted considerably to be applied here. The commission is not an employee of General Telephone Company of the Northwest,

nor is it an association of such employees. It is not controlled by those employees. It is not bound to represent their interests in any way. Its responsibilities, its claims in this case are not typical of any class. And in light of its law enforcement responsibilities and responsibilities to other categories of the public, there are difficulties in saying --

QUESTION: Well, isn't that an argument as to why it shouldn't bring a class action?

MR. WALLACE: Well, I think if one thing emerges with clarity from the legislative history it is that Congress intended that in actions by the commission and by the Attorney General, all of the relief that had heretofore been available in class actions by individuals would be available.

The whole effort in 1972 was to make enforcement more effective and to make the commission and the Attorney General the primary enforcement mechanism.

QUESTION: But the fair labor standards administrator has the right to seek back wages for people who have been discriminated against, too, doesn't he?

MR. WALLACE: That is correct, without having to comply with Rule 23, and that is exactly the analogy we think is here.

QUESTION: But he doesn't call it a class

action.

MR. WALLACE: And neither do we. It is only the Court of Appeals for the Fifth Circuit that has called it a class action and said that we have to comply with Rule 23.

QUESTION: Isn't this in a sense much ado about nothing then?

MR. WALLACE: Well, I think there can be a great deal of litigation stimulated by the question of whether Rule 23 has been complied with. As the Court is familiar with its own cases, there can be a great deal that is another layer of litigation added to these cases if --

QUESTION: Well, how would the opting out process go, applying Rule 23 here?

MR. WALLACE: We have considerable difficulty seeing how it would operate. As far as we are aware, no one is bound in the first place. Part of the contention being made here is that all individuals should be bound, and that is the reason to make it a class action, but that in itself seems to us inconsistent with the way Congress has set up the statute.

As I just mentioned, no one is bound by the fact that the commission decides that there is no merit at all in their claim, why should they be bound by a settlement the commission would reach. Of course, if --

QUESTION: Of course, in one cases you've got a lawsuit and in the other case you don't.

MR. WALLACE: You do.

QUESTION: Isn't it somewhat unusual to take the position that it is perfectly fair to say that a particular individual as a member of the class has claim for back pay as a result of alleged discriminatory practices, can be litigated in full on his behalf by the government and the government can lose and then he can file the same lawsuit all over again? Isn't there something that troubles you a little bit about that?

MR. WALLACE: It is not as unusual as it seems, putting it that way. It is something very similar to the antitrust laws. If the government wins an antitrust lawsuit --

QUESTION: Under the antitrust laws, the government does not bring a suit on behalf of private parties and doesn't get relief for private parties.

MR. WALLACE: That is exactly the situation here, where --

QUESTION: No, you are asking for back pay for these people.

MR. WALLACE: Well, you can get the relief here as you would under the Fair Labor Standards Act, but no one is bound not to sue under the antitrust laws just

because the government has lost its case. They can still bring a suit on their own for the same alleged violation.

QUESTION: But the difference is that here you are asking for monetary relief on behalf of particular individuals, which is not the case in the anitrust context.

MR. WALLACE: But it is in the Fair Labor Standards Act. It is true that --

QUESTION: Well, is it settled under the Fair Labor Standards Act that if the government brings a suit on behalf of a group of wage earners and fails to recover on their behalf, that they can nevertheless relitigate the issue?

MR. WALLACE: As far as I am aware, they can. They are free to. It just doesn't happen very often and we haven't found it happening very often here. One of the most effective things is if the government prevails then people can be required to waive any further claim in accepting the benefits of the judgment that the government does get and --

QUESTION: Has the government ever brought a claim that denominated a class action under the Fair Labor Standards Act?

MR. WALLACE: Not that I am aware of.

QUESTION: Is it your position, Mr. Wallace, that the commission could not bring a class action even if

it wanted to?

MR. WALLACE: This Court said is the way --

QUESTION: Well, what is your position? I am not asking you about ours, I'm asking you about yours.

MR. WALLACE: We have attempted to bring them in the Fifth Circuit since the D. H. Holmes decision. It is not an easy matter.

QUESTION: What is your position here in argument before this Court, that the commission cannot bring a class action?

MR. WALLACE: We would not take that position. If in order to get the relief that Congress contemplated in the 1972 act we had to proceed under Rule 23 and had no other option under this Court's decision, we would proceed under Rule 23 as best we could.

QUESTION: But your position in argument here is that the commission cannot bring a class action suit under Rule 23, is it?

MR. WALLACE: It is that it would be inappropriate, but I wouldn't take the position that it cannot because if we are forced to in order to effectuate the congressional policy that the commission get this relief as the primary enforcement tool, we will do it.

QUESTION: A good deal of the force of your argument disappears.

MR. WALLACE: Well, I don't think the force of our argument disappears.

QUESTION: You say it is a wholly inappropriate thing, it is unworkable, that Rule 23 clearly is not designed for this sort of an action on the part of the commission, and yet you say the commission can bring a class action.

MR. WALLACE: I am only saying that if we are required to we will try to proceed that way.

QUESTION: But you are arguing --

MR. WALLACE: There are many difficulties --

QUESTION: You are arguing before us that you are not required to.

MR. WALLACE: That we are not required to and that it is inappropriate.

QUESTION: And is it part of your argument that the commission cannot do it -- you say no, it is not.

MR. WALLACE: I don't think we can go that far, Mr. Justice. I think --

QUESTION: Even if you went that far and this Court just didn't agree with you and said you are just wrong, you can't go that -- you can bring one.

MR. WALLACE: We would comply.

QUESTION: But you had just been told you were wrong.

MR. WALLACE: Well, we see great difficulty.

QUESTION: So I don't know why you don't just say your position is that you can't bring it, because if we disagree with you, you can.

MR. WALLACE: Well, we have been trying to do it in the Fifth Circuit, but it is hard for me to stand here and say that our position is we can't.

QUESTION: It is our rule as well as Congress' rule.

MR. WALLACE: Yes.

QUESTION: But you say the Fifth Circuit decision is entirely wrong.

MR. WALLACE: Yes, and we will certainly discontinue that practice should this Court agree with our position. We do think it is wrong.

QUESTION: And yet you say you can do it.

MR. WALLACE: We are trying to. We don't fit very well into any of the provisions of Rule 23. An amicus supporting us in this Court argues that we can't be a proper representative of them. There are many reasons why a class of claimants could feel uncomfortable with us as their representative in a class action. For one thing, our position in Title VII litigation can't be unaffected by the fact that the government is often a defendant in Title VII suits. The commission does have responsibility

to enforce Title VII within the government. The Solicitor General has a responsibility to defend the government in such cases before this Court.

Our attitude about the use of civil service examinations in the states has to be affected by the similarity of the use of civil service examinations in the federal government and the fact that many of these examinations have been developed with help from the federal government.

We may have reason to think that Congress approves of the merit system of employment and would want Title VII reconciled with that approach to governmental employment, but there are people who disagree with us on this.

QUESTION: Mr. Wallace, after a lawsuit has been filed and you've made all the decisions that enforcement is appropriate, in a case such as the one before us, is it the practice of the EEOC to give notice to the persons for whom it seeks monetary relief?

MR. WALLACE: I don't think there is a practice to give comprehensive notice. Very often the word gets around --

QUESTION: I understand.

MR. WALLACE: -- and the charging party would know and his representatives, sometimes union people are

involved in civil rights organizations, but there is not a systematic notice given to all persons.

QUESTION: But in your response to Mr. Justice Marshall, as I understand it, your three points is that Congress didn't intend it, it is inappropriate for the government, and third, the language of Rule 23 and the concept of Rule 23 just doesn't fit. But you don't argue that there would be any special burden on the government of compliance?

MR. WALLACE: Well, I think it would --

QUESTION: You could include that as one of your three points.

MR. WALLACE: Right. As we understand it, there is no notice requirement when injunctive relief is --

QUESTION: I understand that, but you don't give as an answer to Mr. Justice Marshall -- Mr. Justice Marshall asked you, as a practical matter, what difference it would make, and you gave three legal answers, but you didn't say anything about any burden on the government to file.

QUESTION: Well, as a practical matter, it will create a burden on the litigation itself. It will encumber Title VII litigation with a lot of issues about adequacy of representation typicality, whether you are really a member of the group, and all the rest of this, would

become bones of contention in the litigation. It will hobble effective enforcement of Title VII.

QUESTION: Not as I understand your opponent's position. If I understand him correctly, he says that you can enlarge the class beyond the typicality requirement that would be appropriate if the specific charging parties were the class representatives, that you are not so limited. So it doesn't seem to me you really are going to have much of a typicality problem. The problem rather, as I understand, would be for you to give notice of the people that you intend to include within the perimeters of the litigation and so the judge will know and everybody will know who is bound, and that is about all there is to it.

MR. WALLACE: Well, there could be contentions about adequacy of representation, but not made by the defendant ordinarily --

QUESTION: Well, I would think that it would be pretty hard to claim that the government doesn't represent them adequately.

MR. WALLACE: This is really an amendment of Rule 23, of changing what the criteria would ordinarily mean. And if the Court were to say that, it wouldn't be a meaningful thing to call it a Rule 23 suit. It wouldn't be like a Rule 23 suit. It would --

QUESTION: The feature that when the lawsuit was over the rights of the parties who had been placed within the class early in the proceeding would have been settled once and for all and you wouldn't have to worry about another lawsuit. That is the thing they are seeking to accomplish, and I don't really see why that is such a terrible suggestion.

MR. WALLACE: Well, it might make it easier for the commission to negotiate settlements if they could represent that everyone will be bound by them. But we recognise that but we don't think that that is the role that Congress assigned to the commission --

QUESTION: I understand.

MR. WALLACE: -- that there is reason enough that people should be bound or that the difficulties as a practical matter are such that the law should be stretched in this direction.

We have mentioned in the last two or three pages of our brief why as a practical matter duplication of litigation is unlikely to occur, certainly because all the relief is equitable in nature and there won't be double remedies of any kind.

MR. CHIEF JUSTICE BURGER: Your time has expired now, Mr. Wallace.

MR. WALLACE: Thank you, Mr. Chief Justice.

MR. CHIEF JUSTICE BURGER: Do you have anything further?

ORAL ARGUMENT OF JAMES R. DICKENS, ESQ.,

ON BEHALF OF THE PETITIONERS--REBUTAAL

MR. DICKENS: Yes, Your Honor.

QUESTION: Mr. Dickens, before you start, I am interested in the same subject that Mr. Stevens has been pursuing, the risk of duplicative litigation. The government's brief says on page 35 at the top that the risk of duplicating litigation can be minimized by the exercise of the District Court's equitable powers under 706(g).

MR. DICKENS: Your Honor --

QUESTION: I would like to hear you discuss that, and you have cited a number of cases in your brief. What has been the actual experience?

MR. DICKENS: Your Honor, let me just give the Court the closest analogy I can. The AT&T consent decree was probably what prompted this litigation. This I think occurred in about 1969 or 1970. The government, the EEOC and the AT&T entered into a consent decree in the Third Circuit. There was no binding effect upon anyone else.

The union challenged that all the way up to this Court and petition for cert was denied. There were challenges in every other, almost every other circuit throughout the country and those are cited in our brief. People

were unhappy with what had been negotiated. They were not bound by it. They were entitled to bring their own actions. So you had a multiplicity of litigation which we are trying to avoid.

We have had a couple of questions about the Fair Labor Standards Act. That is a red herring. That is a unique statute. Congress recognized in that situation that Rule 23 would apply unless it made an exception. Congress did this: To file a private action under the Fair Labor Standards Act, you have to file a written consent. Rule 23-type actions are not permitted.

So the only people bound are those who file a written consent, and the only people who get relief are those who file a written consent to be a party plaintiff.

If the government brings a Fair Labor Standards case, the private right of action is terminated. There is no further private right of action. So we have in the Fair Labor Standards Act what we are asking for here, we want some finality. We want to resolve litigation.

QUESTION: Well, what can a court of equity do if an employee declines to take the award that is available to him and decides he wants to bring a suit?

MR. DICKENS: Your Honor, section 706(e) really refers to the remedy and there is no question that because of the type of situation we have, we are talking about in

many cases you cannot just give an award of back pay. We believe that 706(c) was drafted to provide for the remedy and not for the procedure. The Court may say, well, you can't have your relief if you are going to bring a second suit, and may say you can -- what we run into, however, will be the situation we believe that you may have some people declining their relief and bringing the second action thinking they can get more; you will have as many different decisions as you have district courts. And I do not believe in Title VII this Court, which has consistently sought uniformity in its interpretation, wants a case by case approach.

QUESTION: We said something about that may bear on this, I'm not sure, in the Roper case --

MR. DICKENS: Yes, Your Honor.

QUESTION: -- to the effect that the tender and the payment of the full amount due and interest, all the relief, all the monetary relief initially sought is not the end of the matter in a class action. I am not sure how that would ultimately filter its way into this setting.

MR. DICKENS: Your Honor, one thing you did say in that case -- and I have read the case -- is that you thought it would be a waste of judicial resources to stimulate successive lawsuits by other aggrieved parties, and we concur and that is what we are trying to avoid here.

QUESTION: Mr. Dickens, what you do if one of these women filed suit on her own?

MR. DICKENS: Your Honor --

QUESTION: And not as a class action.

MR. DICKENS: Your Honor, we would litigate that. It would resolve it on its own.

QUESTION: You couldn't turn it into a class action, could you?

MR. DICKENS: Your Honor, she would only be requesting individual relief, we wouldn't want to.

QUESTION: I see. Then you could have as many suits as you had people.

MR. DICKENS: That is possible. In the present case, the government however has requested class-wide relief. They have mentioned during the argument up here that, well, you know, maybe we don't want to do this but we are not bringing this on behalf of the people, yet they have requested class-wide relief.

All we are saying is if you request class-wide relief, comply with Rule 23. If you want individual relief for the charging parties in a prospective injunction, no Rule 23.

QUESTION: They consider this as incidental to the injunction.

MR. DICKENS: Your Honor, that is an improper --

QUESTION: With some cases to back it up.

MR. DICKENS: Your Honor, I know cases that back up their position. They are talking about remedy and not about procedure. There are cases that say when the government can sue in its own name, without having the charge trigger by a private party, perhaps incidental to the court's equity powers they can get relief. We are talking about the procedure, not about the remedy.

In this case, at the front end they are saying we are suing for these people, we want personal relief for them.

QUESTION: Where did they say they are suing for the people?

MR. DICKENS: Your Honor, the complaint --

QUESTION: They said they are suing pursuant to the statute.

MR. DICKENS: No, Your Honor, what they have said was in very broad language, for all these people that have been excluded from these two categories of craft jobs and managerial jobs, we want --

QUESTION: Where is that?

MR. DICKENS: Your Honor, it is in the complaint, paragraph 13, which is in the appendix, pages 7 to 11. Here is the class they allege: They allege that unlawful employment practices, and they allege that there are two

exclusions, two classes, including women from craft jobs and from managerial jobs --

QUESTION: Where do they say class?

MR. DICKENS: Your Honor, they don't say class in the complaint.

QUESTION: I didn't think they did.

MR. DICKENS: No, they do not. But the --

QUESTION: Not maybe not, they didn't.

MR. DICKENS: They did not. They did move, however, to bifurcate the issue of class liability and they acknowledged in their memo opposing our motion that, "The commission acknowledges that it seeks relief for a large class of women" --

QUESTION: Where are you reading from?

MR. DICKENS: Your Honor, I am reading from the record, page 245. It is --

QUESTION: Not in the appendix?

MR. DICKENS: No, Your Honor, it is in the record itself. The appendix has some references, and I think it is in our brief, but the record, page 245, they say, "The commission acknowledges that it seeks relief for a large class of women in this lawsuit."

The lower court and the Court of Appeals both said this is a section 706 class action.

QUESTION: Suppose it had said a large group of

people, would that have been a class action?

MR. DICKENS: Your Honor --

QUESTION: Aren't you giving too much weight to the word "class"?

MR. DICKENS: No, Your Honor, I think not.

QUESTION: You caught them using it, so you are going to lay it on.

MR. DICKENS: Pardon?

QUESTION: You caught them using the word "class" so you are going to get the most out of it.

MR. DICKENS: No, Your Honor. They want individual class relief and that is what they want. They want it and we say fine, but we would like procedures which are well recognized.

QUESTION: I suppose your position is that if a lawyer who is presumed to know about Rule 23 class actions uses the word "class action" when he is representing a large group of people that he means a class action.

MR. DICKENS: Your Honor, I have to agree with that, yes.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

(Whereupon, at 10:37 o'clock a.m., the case in the above-entitled matter was submitted.)

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